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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 JASON SCOTT HUNTER,

11 Petitioner,

12 v.

13 UNITED STATES OF AMERICA,

14 Respondent.  
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Case No. C08-1349-JCC-JPD  
CR06-296-JCC-13

REPORT AND RECOMMENDATION

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17 I. INTRODUCTION AND SUMMARY CONCLUSION

18 Petitioner Jason Scott Hunter, a federal inmate, has filed a 28 U.S.C. § 2255 motion,  
19 Dkt. No. 1, which seeks to correct, vacate or set aside the 43-month sentence imposed  
20 following his November 2006 guilty plea to one count of conspiracy to engage in money  
21 laundering. Respondent United States of America has filed a response opposing the motion.  
22 Dkt. No. 7. Petitioner did not file a reply. After careful consideration of the motion, the  
23 government's response, all governing authorities, and the balance of the record, the Court  
24 recommends that the motion be DENIED and this case DISMISSED with prejudice.  
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1 II. FACTS AND PROCEDURAL HISTORY

2 A. Petitioner's Criminal Case

3 Petitioner, a Canadian, entered the United States in December 2005 and on several  
4 occasions thereafter transported currency and cocaine for a group of Canadian drug dealers.  
5 CR Dkt. No. 133.<sup>1</sup> Petitioner was recruited by a fellow Canadian and eventual co-defendant,  
6 Dale Alexander Prentice. *Id.*

7 Petitioner's job was to transport drug proceeds between Los Angeles, New York City,  
8 and Seattle, and he obtained a Lexus SUV with a hidden compartment for the task. *Id.* He  
9 moved anywhere from \$200,000 to \$600,000 on each trip, and he also transported cocaine on  
10 his return trips. *Id.* He transported between 10 and 20 kilograms of cocaine on each trip.

11 By August 2006, Petitioner was living in King County and making frequent trips to  
12 Los Angeles for others. *Id.* Petitioner was paid cash for each trip. On September 6, 2006,  
13 federal agents executed a search warrant at Petitioner's residence in King County and found  
14 \$580,950 in United States currency and a Lexus SUV with a hidden compartment. *Id.*

15 Petitioner cooperated with the authorities and based on his cooperation, the United  
16 States authorities were able to prosecute Prentice for significant cocaine trafficking, as well as  
17 to assist drug investigations in other districts.

18 B. Petitioner's Guilty Plea

19 Based on his cooperation, Petitioner was given the opportunity to plead guilty to a  
20 single count of conspiracy to engage in money laundering for the \$580,950 in cash found at  
21 his residence. On November 29, 2006, Petitioner entered a guilty plea to conspiracy to engage  
22 in money laundering in accordance with the terms of his Plea Agreement. *See* Dkt. No. 133.

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<sup>1</sup> "CR Dkt. No. \_\_" refers to docket entries in Petitioner's criminal District Court case, CR06-296-JCC-13. Dkt. No. 133 is Petitioner's Plea Agreement.

1 C. Petitioner's Sentence

2 Petitioner, the government, and the Probation Office each asserted a Sentencing  
3 Guidelines range of 87 to 108 months' imprisonment. CR Dkt. Nos. 242, 244. However, the  
4 government filed a downward departure motion, pursuant to U.S.S.G. § 5K1.1, and  
5 recommended 44 months' imprisonment. The Probation Office recommended 43 months and  
6 Petitioner sought 36 months.

7 At the March 30, 2007 sentencing hearing, United States District Judge John C.  
8 Coughenour found the Sentencing Guidelines range to be 87 to 108 months' imprisonment.  
9 Judge Coughenour granted the government's downward departure motion, and imposed 43  
10 months' imprisonment and three years of supervised release. CR Dkt. Nos. 250, 251; Dkt. No.  
11 1 at 1. Judgment was entered that same day. CR Dkt. No. 251.

12 D. Direct and Collateral Review

13 Petitioner did not file a direct appeal. He filed the instant § 2255 motion for a writ of  
14 habeas corpus on September 8, 2008. Dkt. No. 1. Petitioner is presently incarcerated in the  
15 California City Correctional Center in California City, California. His projected release date is  
16 November 13, 2009. *See* Federal Inmate Locator, *available at* [http://www.bop.gov/iloc2/](http://www.bop.gov/iloc2/LocateInmate.jsp)  
17 [LocateInmate.jsp](http://www.bop.gov/iloc2/LocateInmate.jsp).

18 III. DISCUSSION

19 As his sole basis for habeas relief, Petitioner alleges ineffective assistance of counsel  
20 because his counsel did not request at the sentencing hearing a further downward departure  
21 based upon Petitioner's status as a deportable alien. Dkt. No. 1 at 4. Petitioner relies  
22 primarily on *United States v. Pacheco-Soto*, 386 F. Supp. 2d 1198 (D.N.M. 2005), in which  
23 the district court found that a two-level downward departure was appropriate (but not  
24 mandatory) because the defendant's status as a deportable alien meant that he would not be  
25 eligible for early release, to serve his sentence in a minimum security prison, or for reduced  
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1 credits for participation in a drug or alcohol abuse program. *See Pacheco-Soto*, 386 F. Supp.  
2 2d at 1205-06.

3 A. Petitioner's § 2255 Motion is Untimely.

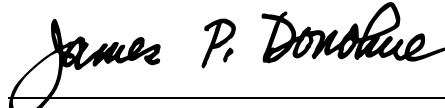
4 The federal habeas statute contains a one-year limitations period on § 2255 motions  
5 which runs from the latest of four specified events: (1) "the date on which the judgment of  
6 conviction becomes final;" (2) "the date on which the impediment to making a motion created  
7 by governmental action in violation of the Constitution or laws of the United States is  
8 removed, if the movant was prevented from making a motion by such governmental action;"  
9 (3) "the date on which the right asserted was initially recognized by the Supreme Court, if that  
10 right has been newly recognized by the Supreme Court and made retroactively applicable to  
11 cases on collateral review;" or (4) "the date on which the facts supporting the claim or claims  
12 presented could have been discovered through the exercise of due diligence." 28 U.S.C.  
13 § 2255(f). An unappealed conviction becomes final when the time for filing a direct appeal  
14 expires. *See Clay v. United States*, 537 U.S. 522, 527-28 (2003) (judgment of conviction  
15 becomes final for the purpose of 28 U.S.C. § 2255 when the defendant's opportunity for direct  
16 appeal of his conviction has been exhausted); *United States v. Schwartz*, 274 F.3d 1220, 1223  
17 (9th Cir. 2001) (same).

18 Here, Petitioner was sentenced on March 30, 2007 and judgment was entered that same  
19 day. CR Dkt. No. 251. He did not file a direct appeal. Therefore, the conviction became final  
20 10 days later on April 9, 2007. *See Fed. R. App. Pro. 4(b)(1)* (in a criminal case, a defendant's  
21 notice of appeal must be filed in the district court within 10 days after the entry of judgment).  
22 As a result, the one-year statute of limitations under § 2255 ended on April 9, 2008. However,  
23 Plaintiff did not file the instant motion until September 8, 2008, five months later. Petitioner  
24 has not provided any reason for his failure to timely file his § 2255 motion. Accordingly, his  
25 motion is untimely and procedurally barred.

1 IV. CONCLUSION

2 For the foregoing reasons, this Court recommends that Petitioner's § 2255 motion be  
3 DENIED and this case DISMISSED with prejudice. A proposed Order accompanies this  
4 Report and Recommendation.

5 DATED this 24th day of April, 2009.

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7 JAMES P. DONOHUE  
8 United States Magistrate Judge  
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